

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 BRIAN L. FERRALL - # 160847
DAVID SILBERT - # 173128
3 MICHAEL S. KWUN - #198945
633 Battery Street
4 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
5 Email: rvannest@kvn.com;
bferrall@kvn.com; dsilbert@kvn.com;
6 mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

7
8 JONATHAN M. JACOBSON, NY SBN 1350495
CHUL PAK (*pro hac vice*)
DAVID H. REICHENBERG (*pro hac vice*)
9 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
10 1301 Avenue Of The Americas, 40th Floor
New York, NY 10019-6022
11 Telephone: (212) 999-5800
Email: jjacobson@wsgr.com; cpak@wsgr.com;
12 dreichenberg@wsgr.com

13 Attorneys for Defendant
14 ARISTA NETWORKS, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF DAVID J. ROSEN IN
SUPPORT OF DEFENDANT ARISTA
NETWORKS, INC.'S ADMINISTRATIVE
MOTION TO REDACT/SEAL PORTIONS
OF COURT'S ORDER RE MOTIONS *IN*
*LIMINE***

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, DAVID J. ROSEN, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and admitted to
3 practice before this Court. I am an associate at the law firm of Keker & Van Nest LLP and
4 counsel for Defendant Arista Networks, Inc. in the above-captioned action. I have personal
5 knowledge of the facts stated herein and, if called as a witness, I could testify competently
6 thereto.

7 2. Arista seeks to redact and seal certain portions of the Court's Order RE Motions *In*
8 *Limine* [Re: ECF 524, 525, 526, 527, 531, 532, 533, 534, 535, 536], which the Court made
9 available to the parties on November 9 for the purpose of identifying potentially sealable
10 information.

11 3. Because this motion to redact and seal relates to a non-dispositive motion, the
12 documents and information that the parties request to file under seal are not subject to a strong
13 presumption of public access. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180
14 (9th Cir. 2006). Rather, the "good cause" standard of Rule 26(c) of the Federal Rules of Civil
15 Procedure applies to the material that Arista seeks to file under seal. *Id.* at 1179. Civil Local Rule
16 79-5 further requires that a party seeking to seal information and documents "establish[] that the
17 document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to
18 protection under the law." Civil L.R. 79-5(b). The sealing request must also "be narrowly tailored
19 to seek sealing only of sealable material." *Id.*

20 4. Arista seeks to redact and seal the following portions of the Court's Order on
21 Motions *In Limine* :

- 22 • Page 7, lines 15 & 28;
- 23 • Page 8, line 2;
- 24 • Page 12, lines 19–21, starting with "Arista's Senior Vice President" and ending
25 with "publicly."

26 5. Good cause supports sealing the specified lines on pages 7 and 8 because they
27 quote statements and findings from the CONFIDENTIAL VERSION of the International Trade
28 Commission's Opinion in *In the Matter of Certain Network Devices, Related Software, and*

1 *Components Thereof (I)*, Investigation No. 337-TA-944. Compelling reasons justify redacting
2 this reference because it consists of Arista confidential business information. The confidential
3 version of the Commission’s Opinion contains information designated by Arista as confidential
4 business information pursuant to Commission Rule 201.6, which defines confidential information
5 as: “information which concerns or relates to the trade secrets, processes, operations, style of
6 works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of
7 customers, inventories, or amount or source of any income, profits, losses, or expenditures of any
8 person, firm, partnership, corporation, or other organization, or other information of commercial
9 value, the disclosure of which is likely to have the effect of either impairing the Commission’s
10 ability to obtain such information as is necessary to perform its statutory functions, or causing
11 substantial harm to the competitive position of the person, firm, partnership, corporation, or other
12 organization from which the information was obtained, unless the Commission is required by law
13 to disclose such information.” 19 C.F.R. § 201.6(a)(1). Arista previously requested confidential
14 treatment for certain portions of the Commission’s Opinion, and the public version of the Opinion
15 does not include the information quoted and cited to in the Court’s order.

16 6. Good cause supports sealing the specified lines on page 12 because they
17 summarize an Arista witness’s discussion of internal, non-public information regarding
18 competitive intelligence and Arista sales strategies. *See In re Elec. Arts, Inc.*, 298 F. App’x at
19 569–70; *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2; *see*
20 *also Schwartz*, 2016 WL 1301186, at *2 (discussing the harm that could result by the
21 dissemination of similar sensitive internal business information to competitors, who would find it
22 valuable).

23 7. Arista does not seek to seal any other portions of the Court’s Order.
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1 Executed November 16, at San Francisco, California.

2 I declare under penalty of perjury under the laws of the United States of America that the
3 foregoing is true and correct.

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8 DAVID J. ROSEN
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